

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

1			
2	AITHENT, INC.,)	
3)	
4	Plaintiff,)	
5	vs.)	Case No.
6)	11-0173-CV-W-GAF
7	THE NATIONAL ASSOCIATION)	
8	of INSURANCE COMMISSIONERS,)	
9)	
10	Defendant.)	

VIDEOTAPED DEPOSITION OF JULIENNE L. FRITZ,
produced, sworn, and examined on Thursday, the 18th
day of October, 2012, at the offices of Husch
Blackwell, LLP, 4801 Main Street, Suite 1000, in the
City of Kansas City, State of Missouri, before
Naola C. Vaughn, Registered Professional Reporter,
Certified Realtime Reporter and Certified Court
Reporter within and for the State of Missouri.

A P P E A R A N C E S:

On behalf of the Plaintiff:

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Also Present: Venu Gopal, Aithent
 Beth Hargarten, NAIC
 Jim Ross, videographer

COURT REPORTER:

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1 Q. Now, if the transaction is submitted
2 through the PIN Gateway, is it fair to say that the
3 transaction could have been sent to any state that
4 PIN had access to?

5 A. I can't answer that question. I
6 don't -- I don't know that it actually could have
7 just been sent to any state.

8 The idea behind SBS, though, in order to
9 be an SBS state, you had to have licensed the
10 software. So in order for SBS to work, you had to
11 have licensed the software.

12 Q. But respectfully I'm asking you a
13 different question.

14 If the transaction is being submitted
15 through PIN, couldn't the transaction have gone
16 anywhere that PIN went to?

17 A. Yes.

18 Q. And how many states did PIN have access
19 to at that time?

20 A. I don't know.

21 Q. If a transaction were to travel from an
22 SBS front-end to the SBS back office, it wouldn't
23 need to go through PIN, would it?

24 A. No.

25 Q. Let me ask you to look at paragraphs 4

1 Q. It's certainly millions?

2 A. Yes.

3 Q. Okay. Am I correct that NAIC has not
4 shared any of that revenue with Aithent?

5 MR. SIMON: Objection, vague.

6 A. Okay. Clarify your question. Any of
7 which revenue?

8 Q. BY MR. GALLAGHER: Revenue that NAIC and
9 NIPR have generated by using the NIPR front-end to
10 send transactions to states which don't license the
11 SBS back office.

12 A. Okay. If a state did not license SBS
13 for any transaction revenue that's generated through
14 NIPR, because NAIC doesn't generate that revenue,
15 NIPR generates that revenue, none of that has been
16 shared with Aithent, that is correct.

17 Q. Am I correct that NAIC claims it need
18 not pay royalties to Aithent in that situation
19 because SBS is not being used in the transaction?

20 A. That is correct.

21 Q. So does that mean that by NAIC's logic
22 it would have to pay 50 percent of the revenue if
23 SBS were being used?

24 MR. SIMON: Objection, calls for a legal
25 conclusion. The terms of the contract speak for

1 themselves.

2 A. Based on my understanding of the
3 agreement, a state had to have licensed SBS for any
4 revenue generation to Aithent.

5 Q. BY MR. GALLAGHER: Well, if an SBS
6 front-end were used to send a transaction to a state
7 that did not license the SBS back office, would NAIC
8 have to pay or not, from your perspective?

9 A. They're one -- that wasn't -- the SBS
10 front-end couldn't have been used in that way.
11 First a state had to license SBS in order to use
12 front-end or back end, or any of it, and if they
13 would have licensed only the front-end, it would not
14 have worked because it relies on the back end.

15 Q. Oh, but I'm saying if the SBS front-end
16 had been used to send transactions to both states
17 that do license SBS back office and don't, right?
18 Let's just assume that it had been used for that
19 purpose, okay?

20 By NAIC's logic, wouldn't it have to pay
21 Aithent 50 percent of what's generated when the SBS
22 front-end is used to send a transaction to a state
23 that doesn't license the back office?

24 MR. SIMON: Okay. Objection. That is
25 compound. It's an improper hypothetical, lacks

1 foundation. It calls for opinion testimony, calls
2 for a legal conclusion based upon the terms of the
3 contract in dispute in this case. It also calls for
4 speculation.

5 A. My understanding of the agreement is the
6 state has to license SBS. So the hypothetical that
7 you've created would never have happened. Our
8 understanding was that was first and foremost one of
9 the things that had to happen, a state had to
10 license SBS.

11 Q. BY MR. GALLAGHER: Okay. And what
12 documents are there which corroborate your
13 understanding of this relationship?

14 MR. SIMON: Objection, calls for a legal
15 conclusion.

16 Q. BY MR. GALLAGHER: If any.

17 A. It -- the license and services
18 agreement -- or agreement between Aithent and NAIC
19 defines what an SBS state is. It's a state that's
20 licensed in SBS.

21 Q. Okay. Let me show you a document,
22 please, Ms. Fritz. Just give me a moment to find
23 it. Sorry, I'll find it in a moment. Found it.

24 Okay. I think that we've marked this
25 document as an exhibit, and we have, and it's marked